

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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**FISCAL IMPACT STATEMENT**

**LS 7199**

**BILL NUMBER:** HB 1106

**NOTE PREPARED:** Feb 19, 2009

**BILL AMENDED:** Feb 19, 2009

**SUBJECT:** Resale or Donation of Items with Lead Paint.

**FIRST AUTHOR:** Rep. Tincher

**FIRST SPONSOR:**

**BILL STATUS:** CR Adopted - 1<sup>st</sup> House

**FUNDS AFFECTED:** X GENERAL  
DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) The bill prohibits a person from selling, reselling, distributing, or donating toys or child care articles that have been recalled because of lead paint. It requires a retailer or distributor to remove a recalled product from availability for purchase or distribution from the retailer or distributor not later than 24 hours after being notified of the recall because of lead paint.

It subjects a violator to the same penalties and actions as a person who commits a deceptive act, and it provides an affirmative defense for consignment shops and resale stores.

**Effective Date:** July 1, 2009.

**Explanation of State Expenditures:**

**Explanation of State Revenues:** (Revised) *Summary-* The bill could increase revenue from civil penalties and court fees deposited in the state General Fund if actions are filed by an individual or the Attorney General for a retailer or distributor failing to remove a recalled product in the appropriate time frame.

*Civil Penalties:* If the Attorney General initiates an action to enjoin a deceptive act, a civil penalty not exceeding \$5,000 may be collected on behalf of the state. Also, if a person violates the terms of a previously issued injunction, the person is required to pay the state a \$15,000 civil penalty. These civil penalties are deposited in the state General Fund.

*Court Fee Revenue:* If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. These fees may be paid by an individual filing an action or the retailer violating the recall

provisions above. The deceptive act statute allows the court to award these fees as part of a judgment awarded the winning party, The Attorney General is not required to pay these fees, but they may be assigned to a retailer found guilty of a violation.

A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

**Explanation of Local Expenditures:**

**Explanation of Local Revenues:** If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

**State Agencies Affected:** Attorney General.

**Local Agencies Affected:** Trial courts, city and town courts.

**Information Sources:**

**Fiscal Analyst:** Karen Firestone, 317-234-2106.